

STATE OF SOUTH CAROLINA

(Caption of Case)

State Universal Service Support of Basic Local
Service Included in a Bundled Service Offering or
Contract Offering

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2009 - 326 - C

(Please type or print)

Submitted by: Margaret M. Fox, Esquire

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DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition☐ Request for item to be placed on Commission's Agenda expeditiously☐ Other:

INDUSTRY (Check one)

NATURE OF ACTION (Check all that apply)

- ☐ Electric
☐ Electric/Gas
☐ Electric/Telecommunications
☐ Electric/Water
☐ Electric/Water/Telecom.
☐ Electric/Water/Sewer
☐ Gas
☐ Railroad
☐ Sewer
☒ Telecommunications
☐ Transportation
☐ Water
☐ Water/Sewer
☐ Administrative Matter
☐ Other: _____

- ☐ Affidavit
☐ Agreement
☐ Answer
☐ Appellate Review
☐ Application
☐ Brief
☐ Certificate
☐ Comments
☐ Complaint
☐ Consent Order
☐ Discovery
☐ Exhibit
☐ Expedited Consideration
☐ Interconnection Agreement
☐ Interconnection Amendment
☐ Late-Filed Exhibit

- ☐ Letter
☐ Memorandum
☐ Motion
☐ Objection
☐ Petition
☐ Petition for Reconsideration
☐ Petition for Rulemaking
☐ Petition for Rule to Show Cause
☐ Petition to Intervene
☐ Petition to Intervene Out of Time
☐ Prefiled Testimony
☐ Promotion
☐ Proposed Order
☐ Protest
☐ Publisher's Affidavit
☐ Report

- ☐ Request
☐ Request for Certification
☐ Request for Investigation
☐ Resale Agreement
☐ Resale Amendment
☐ Reservation Letter
☒ Response
☐ Response to Discovery
☐ Return to Petition
☐ Stipulation
☐ Subpoena
☐ Tariff
☐ Other: _____

Print Form

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MCNAIR
ATTORNEYS

October 19, 2009

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Charles L. A. Terreni
Chief Clerk and Administrator
South Carolina Public Service Commission
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Suite 100
Columbia, South Carolina 29210

Re: State Universal Service Support of Basic Local
Service Included in a Bundled Service Offering
or Contract Offering
Docket No. 2009-326-C

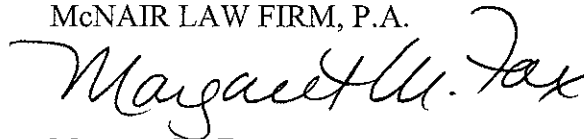
Dear Mr. Terreni

Enclosed for filing please find the Response to the Commission Inquiry on behalf of the South Carolina Telephone Coalition in the above-referenced docket. By copy of this letter and Certificate of Service, a copy is being served on all parties of record.

Thank you for your assistance.

Sincerely,

McNAIR LAW FIRM, P.A.


Margaret M. Fox

MMF:rwm
Enclosure

cc: Parties of Record

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BEFORE THE
PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2009-326-C

State Universal Service Support of Basic)
Local Service Included in a Bundled)
Service Offering or Contract Offering)

RESPONSE TO
COMMISSION INQUIRY

This response is filed on behalf of the South Carolina Telephone Coalition (“SCTC”) in response to a directive of the Public Service Commission of South Carolina (“Commission”) on October 15, 2009, regarding an ongoing discovery dispute between the South Carolina Cable Television Association, CompSouth, tw telecom of south carolina llc, and Nuvox Communications Incorporated (collectively “CLECs”) and the SCTC, Office of Regulatory Staff (“ORS”) and United Telephone Company of the Carolinas, LLC d/b/a CenturyLink (“CenturyLink”).

The Commission directed the SCTC to inform the Commission as to how it would be harmed by the release of the information in question under the protective order proposed by the Hearing Officer in this matter.

First, we note that the Hearing Officer’s directive was specifically predicated on his understanding that “no other party to this Docket has stated a position on this matter.” See Hearing Officer’s Order dated October 7, 2009, at p. 5. To the contrary, while the discovery request was directed at ORS and not at the individual companies, the information in question belongs to the SCTC member companies and is in ORS’ possession only because it is required to

be filed on an annual basis with ORS solely for purposes of administering the State USF. The SCTC members have a strong interest in protecting this information and, in fact, the SCTC previously requested, and the Commission issued, a protective order covering the exact same information that is at issue here. See Order No. 2005-139.

The Commission Protective Order that already is in place succinctly states the harm that SCTC member companies face if the information being requested here is released. According to the Commission Order, "it is not appropriate to make detailed information regarding a party's operations publicly available. Access to this information could give actual and potential competitors an unfair competitive advantage." Order No. 2005-139 at pp. 2-3. Specifically, the data sheets in question include detailed information regarding the individual companies' operations that would allow actual and potential competitors to determine the mix of business services provided by the individual companies in the rural areas they serve. This information could be extremely harmful to small, rural telephone companies like the SCTC member companies, because most competitive local exchange carriers specifically target business customers. Even before Order No. 2005-139 was issued to specifically protect the data at issue here, the Commission treated such filings as confidential. In fact, when the Commission appointed ORS as the Administrator of the State USF, the Commission specifically directed that the confidential treatment the Commission had afforded to information filed for purposes of administering the State USF would stay in place after the transition of the administrative function to ORS. See Commission Order No. 2005-7.

Once an allegation of harm has been made by a party, the burden of proof shifts to the party seeking discovery, who must now come forward and show that the information sought is both relevant and necessary to the case. See Hamm v. South Carolina Public Service

Commission, 312 S.C. 238, 439 S.E.2d 852 (1994). The CLECs have not demonstrated that the requested information is relevant -- let alone necessary -- to their case. See ORS Response to CLECs' Motion to Compel; SCTC and ORS Joint Motion Requesting Commission Review of Hearing Officer's Order.

The issue in this proceeding is a simple one -- "whether basic local service should receive State Universal Service support when it is included in a bundled service offering or contract offering." See Notice of Filing and Hearing dated August 7, 2009. It is a generic issue and a matter of legal and public policy consideration. The information sought is not relevant to the issue in this proceeding, because it does not provide any information on bundled service offerings or contract offerings, as further explained below.

Furthermore, even if the information the CLECs seek could be considered relevant (which it is not), the data sheets in question are not necessary to the CLECs' case because they do not contain the information the CLECs allege they are seeking to discover, nor can the information they seek be gleaned from any of the data contained in the data sheets. Specifically, CLECs' argument for the relevance of the information can be found in their Motion to Compel, wherein CLECs argue:

The issue before the Commission is whether lines that are sold by COLRs as parts of bundles or contract offerings should be supported by the USF. . . . Part of the information required is each COLRs number of "eligible lines." . . . In the current proceeding CLECs contend that lines that are parts of bundles or contract offerings are not eligible lines. . . . It is critical to the CLECs' ability to prepare for the hearing that they be able to see how the COLRs and ORS are currently reporting and accounting for COLRs' eligible lines. These documents are therefore highly relevant and should be produced.

CLECs' Motion to Compel at p. 3 (emphasis added). SCTC member companies have already informed CLECs, in response to discovery, that they do not separately track or account for bundled service or contract offerings, and that all State USF lines reported include such lines.

SCTC member companies are willing to stipulate this point on the record, consistent with their position that carriers of last resort who provide basic local exchange telephone service should receive State Universal Service support, regardless of whether the basic local service is included in a bundled service offering or contract offering or provide on a stand-alone basis. That is the way the State USF has always worked, the way it works today, and the way it should continue to operate. Thus, the information CLECs claim to seek (i.e., how bundled and contract offerings are reflected on the data sheets) is already known (i.e., bundled and contract offerings are not separately broken out on the data sheets but are included in total lines). Therefore, a stipulation to that effect is sufficient for the CLECs' stated purposes.

CLECs also state, in their Reply Memorandum, that "it will be interesting to see" how COLRs responded to the question on the forms regarding the maximum amount that can be charged for their eligible residential and single-line business services. SCTC members have contended and continue to contend that, since they are required to maintain tariffs for basic local exchange service regardless of whether it is bundled or provided on a stand-alone basis, their Commission-approved tariff rates constitute the maximum amount they can charge, and the maximum amount they do charge, for those services. Again, SCTC members are willing to stipulate on the record that tariffed rates are reported for these services. A list of SCTC companies' tariffed rates for residential and single-line business services is attached hereto.

Furthermore, it appears that CLECs do not need the information in question for purposes of this proceeding but are merely on a "fishing expedition." The CLECs have tried to confuse the narrow issue at stake in this proceeding, and they appear to claim relevance of the information based on a position they have attempted to argue before the Commission in the past, i.e., that the State USF should be administered on a "per-line" basis rather than on a revenue-

neutral basis based on tariff reductions, as it is currently set up. See, e.g., CLECs' Reply dated July 17, 2008 in Docket No. 1997-239-C (relating to CLECs' earlier-filed Motion Requesting Review of Additional USF Issues, dated July 3, 2008), at pp. 3-5 (arguing that "ILECs should be recovering from the USF on a per line basis"). The fact is that this is not how the State USF currently operates, nor is it consistent with universal service policy. The issue of per-line support is not before the Commission in this proceeding, and any discovery calculated to obtain information on this issue is outside the scope of the instant proceeding. See Royster v. Unity Life Ins. Co., 193 S.C. 468, 8 S.E.2d 875, 877 (1940) (the South Carolina Supreme Court has "time and again stated that it does not favor" fishing expeditions, and limited the scope of discovery to what would be relevant to the claim). The Commission set up the State USF on a revenue-neutral basis so that carriers of last resort would reduce tariffed rates for services that contain implicit support for basic local exchange service, and would be permitted to draw State USF on a dollar-for-dollar basis, based on the amount of revenue reductions (i.e., COLRs can draw a dollar out of State USF only after they have reduced their rates by a dollar). The State USF is designed to be a "specific, predictable and sufficient [State mechanism] to preserve and advance universal service." See 47 U.S.C. § 254(b)(4). Any argument relating to per-line as opposed to revenue-based support is outside the scope of and irrelevant to this proceeding.


The Hearing Officer's Order mistakenly follows CLECs' incorrect logic on this point, and should be overruled by the Commission. See Hearing Officer's Order dated October 7, 2009, at p. 3.

Conclusion

SCTC has alleged – and the Commission has previously held – that disclosure of the requested information would harm the SCTC member companies by giving actual and potential

competitors an unfair competitive advantage. In this case, SCTC members are being asked to provide detailed, company-specific information regarding their business to actual competitors. The CLECs have not met their burden of demonstrating the relevance of the information they seek to the issue in this proceeding. Furthermore, even if the information they seek were relevant (which it is not), the CLECs have not met their burden of proving that the data sheets they seek are necessary to their case, because the purposes for which they claim to need the information have already been satisfied. CLECs claim to want to know how COLRs are reporting "eligible" lines for State USF purposes and the maximum amount that can be charged for those eligible lines. Both SCTC and ORS have informed CLECs regarding how those items are being reported, and have indicated a willingness to stipulate those facts on the record to the extent necessary.

Respectfully submitted,

By: 

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ATTORNEYS FOR THE SOUTH
CAROLINA TELEPHONE COALITION

Columbia, South Carolina

October 19, 2009

**Authorized Maximum Rates for
South Carolina Telephone Coalition
Member Companies
October 16, 2009**

Company	Authorized Maximum Rate	
	Residential	Single-Line Buisness
Bluffton Tel. Co., Inc.	\$14.35	\$28.70
Chesnee Tel. Co.	\$16.40	\$31.10
Chester Tel. Co.	\$13.95	\$27.90
Farmers Tel. Coop., Inc.	\$14.35	\$28.70
Fort Mill Tel. Co.	\$14.35	\$28.70
Hargray Tel. Co., Inc.	\$14.35	\$28.70
Home Tel. Co., Inc.	\$14.35	\$28.70
Horry Tel. Coop., Inc.	\$13.50	\$24.00
Lancaster Tel. Co.	\$14.35	\$28.70
Lockhart Tel. Co.	\$11.90	\$23.80
McClellanville Tel. Co.	\$14.35	\$28.70
Norway Tel. Co.	\$14.35	\$28.70
Palmetto Rural Tel. Coop., Inc.	\$14.35	\$28.70
PBT Telecom, Inc.	\$14.35	\$28.70
Piedmont Rural Tel. Coop., Inc.	\$14.64	\$28.92
Ridgeway Tel. Co.	\$13.95	\$27.50
Rock Hill Tel. Co.	\$14.35	\$28.70
Sandhill Tel. Coop., Inc.	\$10.80	\$21.60
St. Stephen Co.	\$14.35	\$28.70
West Carolina Tel. Coop., Inc.	\$14.35	\$28.70
Williston Tel. Co.	\$14.35	\$28.70

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

DOCKET NO. 2009-326-C

IN RE: State Universal Service Support of Basic Local)
 Service Included in a Bundled Service Offering)
 or Contract Offering)
 _____)

**CERTIFICATE
OF SERVICE**

I, ElizaBeth A. Blitch, do hereby certify that I have this date served one (1) copy of the attached Response to the Commission Inquiry in the above-referenced matter to the persons named below by causing said copy to be deposited with the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below.

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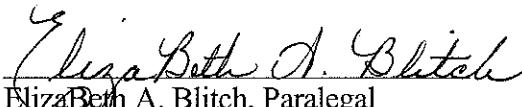
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Certificate of Service
South Carolina Telephone Coalition
October 19, 2009
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October 19, 2009

Columbia, South Carolina